



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

AUG 24 2012

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Gregory Anderson  
President – Reed Minerals Division of  
Harsco Corporation  
5000 Ritter Road  
Suite 250  
Mechanicsburg, Pennsylvania 17055

Dear Mr. Anderson:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves case docket number CAA-05-2012-0046 with Harsco. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on AUG 24 2012.

Pursuant to paragraph 30 of the CAFO, Harsco must pay the civil penalty within 30 days of the date the CAFO is filed. Your check must display the case docket number, CAA-05-2012-0046, and the billing document number, 2751203A047.

Please direct any questions regarding this case to Michael Berman, Associate Regional Counsel at 312.886.6837.

Sincerely,

A handwritten signature in cursive script, appearing to read "William MacDowell".

William MacDowell  
Section Chief, AECAS (MN/OH)

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CAA-05-2012-0046</b>
	)	
<b>Harsco Corporation</b>	)	<b>Proceeding to Assess a Civil Penalty</b>
<b>Gary, Indiana</b>	)	<b>Under Section 113(d) of the Clean Air Act</b>
	)	<b>42 U.S.C. § 7413(d)</b>
<b>Respondent.</b>	)	
_____	)	

RECEIVED  
REGIONAL HEARING CLERK  
U.S. EPA-REGION 5  
2012 AUG 24 PM 12:30

**Consent Agreement and Final Order**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Harsco Corporation (Harsco), a corporation doing business in Indiana.
4. Under 40 C.F.R. § 22.13(b), where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO).
5. The parties agree that settling this action pursuant to the terms of this CAFO without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. On May 30, 2008, 73 Fed. Reg. 23356, EPA approved Indiana Administrative Code (IAC) at 326 IAC 6.8-10-3 as part of the federally enforceable state implementation plan (SIP) for Indiana.

10. 326 IAC 6.8-10-3 requires particulate matter emissions from source-wide activities shall be a zero percent frequency of visible emission observations from a building enclosing all or part of the material processing equipment, except from a vent in the building.

11. On October 17, 1995, 60 Fed. Reg. 43008, EPA approved 326 IAC 2-8-5 as part of the federally enforceable SIP for Indiana.

12. 326 IAC 2-8-5 requires, among other things, that in order to comply with Harsco's Federally Enforceable State Operating Permit (FESOP) F089-27389-00107 Conditions:

- a. D.1.1 - PM, PM10, and PM2.5 Limitations,
- b. D.1.2 - PM10 Limitations, and
- c. D.1.3 - PM Limitations,

the baghouse, identified as CE02-14, controlling the PM, PM10, and PM2.5 emissions from the dry slag processing area shall be in operation and control PM, PM10, and PM2.5 emissions at all times that these units are in operation.

13. Permit F089-27389-00107 at Section C.14(a), states that upon detecting an excursion or exceedance, the Permittee shall restore operation of the emission unit (including any control device and associated capture system) to its normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions.

14. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009 and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009 under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

15. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

16. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

#### **Factual Allegations and Alleged Violations**

17. Harsco operates a facility at 7100 West 9<sup>th</sup> Avenue, in Gary, Indiana (the Facility).

18. The Facility is a stationary source as defined in the Act and the Indiana SIP.

19. The Indiana Department of Environmental Management (IDEM) issued a FESOP, identified as F089-27389-00107, to Harsco on October 19, 2009.

20. Harsco operates an enclosed dry slag processing operation at the Facility.

21. A building encloses certain material processing equipment including crushers, screens, conveyors, bucket elevators, blend silos, roofing silos, blasting silos and chutes.

22. The crushers, screens, conveyors, bucket elevators, roofing silos, blasting silos and chutes are emission units.

23. Harsco owns and/or operates a baghouse, identified as CE02-14, located outside its enclosed dry slag processing area at the Facility.

24. Harsco's enclosed dry slag processing area is subject to 326 IAC 6.8-10-3 and 326 IAC 2-8-5(a)(4).

25. EPA issued a Notice and Finding of Violations (NOV/FOV) to Harsco on September 23, 2011, which alleged that Harsco failed to comply with 326 IAC 6.8-10-3, 326 IAC 2-8-5(a)(4) and the permit conditions in Harsco's FESOP.

26. EPA alleges that Harsco failed to prevent visible PM emissions from leaving the building enclosing the dry slag processing equipment in violation of the Indiana SIP at 326 IAC 6.8-10-3.

27. EPA alleges that Harsco failed to prevent visible PM emissions from leaving the building enclosing the dry slag processing equipment in violation of Harsco's FESOP F089-27389-00107, condition at Section C.6(h).

28. EPA alleges that Harsco failed to have its baghouse control the PM emissions from the dry slag processing operation at its Gary facility in violation of Harsco's FESOP F089-27389-00107, condition at Section D.1.6.

29. EPA alleges that Harsco's failure to restore operations of the emission units (crushers, screens, conveyors, bucket elevators, blend silos, roofing silos, blasting silos and chutes) inside the building upon detecting the exceedances to their normal or usual manner of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions is a violation of Harsco's FESOP F089-27389-00107, condition at Section C.14 (a).

30. Harsco's consultant completed an Air Flow Study at the Facility to investigate methods to minimizing particulate matter emissions from its processes for the purposes of improving industrial hygiene. The Air Flow study was conducted voluntarily by Harsco, independent of any EPA allegations or requirements and prior to EPA's June 2011 inspection. This study recommended measures to optimize dust capture and airflow to the baghouse to reduce fugitive emissions from leaving the building enclosing the dry slag operations. Harsco completed all of the recommendations of the Air Flow Study on February 28, 2012.

31. Harsco completed repairs of all openings in the building enclosing the dry slag operations on or before May 17, 2012. The openings were alleged to be sources of visible emissions observed during a June 2011 inspection.

32. Harsco removed the residual finished product under the screw conveyer on or before May 17, 2012.

33. On September 13, 2011, Harsco adjusted the baghouse trough spray nozzle to divert the water spray away from the screw conveyor and downstream towards the trough to aid in particulate matter emptied from the baghouse to flow towards the collection ponds. Additionally, it will decrease moisture-caused clogging of the screw conveyor.

34. An Administrative Order is being filed concurrently with this CAFO. Pursuant to the Administrative Order Harsco will be required to submit a revised permit application to IDEM within 90 days of the effective date of the Administrative Order to request that IDEM incorporate a revised Fugitive Dust Control Plan into its state operating permit.

**Civil Penalty**

35. Based on analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, Harsco's cooperation, and Harsco's prompt return to compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$69,398.00.

36. Within 30 days after the effective date of this CAFO, Respondent must pay a \$69,398.00 civil penalty by cashier's check, certified check, electronic funds transfer, automated clearinghouse, or online payment.

37. **For electronic funds transfer:** make the electronic funds transfer, payable to "Treasurer, United States of America," and send to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, New York 10045  
Field Tag 4200 of the Fedwire message should read:  
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

38. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Michael Berman at the following addresses when it pays the penalty:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Michael Berman (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

41. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

42. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in this CAFO and the NOV/FOV.



43. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

44. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state and local laws. Except as provided in paragraph 40, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

45. Respondent certifies that it is now in compliance with the requirements that formed the basis of the allegations in paragraphs 23 through 27 of this CAFO.

46. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

47. The terms of this CAFO bind Respondent, its successors and assigns.


48. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

49. Each party agrees to bear its own costs and attorney's fees in this action.

50. This CAFO constitutes the entire agreement between the parties.

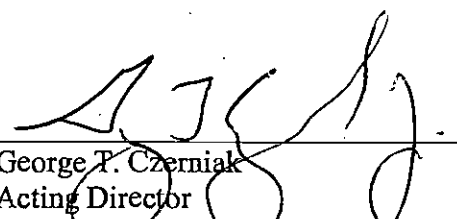
**Harsco Corporation, Respondent**

5/31/12  
Date

  
\_\_\_\_\_  
Gregory Andersen  
President – Reed Minerals Division of  
Harsco Corporation

**United States Environmental Protection Agency, Complainant**

6/14/12  
Date

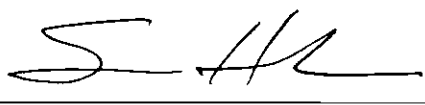
  
\_\_\_\_\_  
George T. Czerniak  
Acting Director  
Air and Radiation Division  
U.S. Environmental Protection Agency  
Region 5

**Consent Agreement and Final Order**  
**In the Matter of: Harsco Corporation**  
**Docket No. CAA-05-2012-0046**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

August 23, 2012  
Date

  
\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

## CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Consent Agreement and Final Order, by Certified Mail, Return Receipt Requested, to:

Gregory Anderson  
President – Reed Minerals Division of  
Harsco Corporation  
5000 Ritter Road  
Suite 250  
Mechanicsburg, Pennsylvania 17055

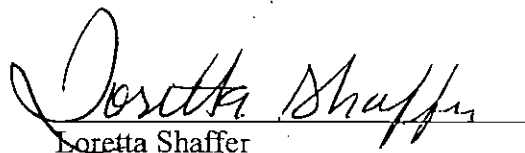
I also certify that I sent copies of the Notice of Violation and Finding of Violation by first-class mail to:

Phil Perry, Chief  
Compliance and Enforcement Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
MC 61-53, IGCN 1003  
Indianapolis, Indiana 46204-2251

Rick Massoels  
Air Compliance  
Indiana Department of Environmental Management  
8380 Louisiana Street  
Merrillville, Indiana 46410

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2012 AUG 24 PM 12:10

On the 24 day of August 2012.



Loretta Shaffer  
Administrative Professional Assistant  
Planning and Administration Section

CAA-05-2012-0046

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7667 6014